## UNITED STATES GOVERNMENT BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 29

PREMIER PARATRANSIT, LLC		)
	Employer	)
and		) Case No. 29-UD-089447
		)
RODNEY SMITH, AN INDIVIDUA	AL	)
		)
	Petitioner	)
and		)
		)
INTERNATIONAL BROTHERHOO	DD	)
OF TRADE UNIONS, LOCAL 713		)
		)
	Intervenor	)

# REPORT ON OBJECTIONS AND NOTICE OF HEARING

On September 18, 2012, Rodney Smith, an individual, herein called the Petitioner, filed a petition in the above referenced case seeking to withdraw the authority of International Brotherhood of Trade Unions, Local 713, herein called the Union, to require, under its agreement with Premier Paratransit, LLC, herein called the Employer, that employees make certain lawful payments to the Union in order to retain their jobs. Pursuant to a Stipulated Election Agreement signed by the parties, and approved by the undersigned on October 3, an election by secret ballot was conducted on November 19 among the employees in the following unit:

All full-time and regular part-time operators, vehicle maintenance employees, and building maintenance employees employed by the Employer at its 940 Remsen Avenue, Brooklyn, New York facility but excluding all dispatchers, office clerical employees, confidential

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All dates hereinafter are in 2012 unless otherwise indicated.

employees, all other employees, and supervisors as defined in Section 2(11) of the Act.

The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	173
Number of void ballots	0
Number of ballots cast in favor of withdrawing	
the authority of the bargaining representative	
to require, under its agreement with the Employer,	
that employees make certain lawful payments to the	
Union in order to retain their jobs	64
Number of ballots cast against the above	
Proposition	1
Number of valid votes counted	65
Number of challenged ballots	4

Challenges are not sufficient in number to affect the results of the election. The required majority of the eligible voters have not case valid ballots in favor of the proposition.

The Petitioner filed timely objections to conduct affecting the results of the election.<sup>2</sup> A copy of the Petitioner's objections is attached hereto as Exhibit A.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned Petitioner's objections, during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

#### Objection No. 1

In its first objection, the Petitioner alleges that during the three days prior to the election, the Notices of Election were posted but then removed. The Petitioner asserts that none of the

The Petitioner has requested permission to withdraw its allegation that the Notices of Election should have been posted in French. I approve the Petitioner's request.

Notices of Election were posted for the required seventy-two hour period. The Employer asserts that this objection lacks merit. The Union has not taken a position on this objection.

In its offer of proof, the Petitioner states that named individuals will testify that the Notices of Election were initially posted but taken down during the seventy-two hour period before the election. The Employer states that the Notices of Election were posted in conspicuous places where employees would see them for the entire seventy-two hour period before the election. The Employer states that one Notice was taken down before the election, but other notices remained posted and visible for the required seventy-two hour period.

Section 103.20 of the Board's Rules and Regulations provides:

- (a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.
- (b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.
- (c) A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.
- (d) Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of section 102.69(a).

This rule has been strictly enforced by the Board. See Sara Lee Bakery Group d/b/a International Baking Company, 342 NLRB 136, 152 (2004). The foregoing conduct involving the removal of the Notices of Election during the seventy-two hour posting period before the election, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election. See Gaetano & Associates Inc., 344 NLRB 531, 541-42 (2005). In view of the conflicting positions and facts asserted by the parties regarding the posting of the

Notices, I find that the Petitioner's first objection raises material and substantial issues of fact that would be best resolved by a hearing. Accordingly, I direct that a hearing be held regarding the posting of the Notices of Election.

#### Objection No. 2

In his second objection, the Petitioner alleges that the Employer assigned drivers extra work so that they were not able to vote while the polls were open. The Employer asserts that this objection has no merit. The Union asserts that the Metropolitan Transit Authority (MTA), not the Employer, determines the drivers' routes, and thus this objection lacks merit.

In his offer of proof, the Petitioner states that named employees will testify that they were assigned extra work to perform on election day so that they could not vote. The Employer denies this allegation.

The foregoing conduct of assigning employees work so that they were unable to vote in a Board election, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election. See Cal Gas Redding, Inc., 241 NLRB 190 (1979) (in which the Board set an election aside upon a finding that the employer had prevented an employee from voting by assigning him a specific task). Accordingly, I direct that a hearing be held regarding the Petitioner's second objection.

### SUMMARY AND RECOMMENDATIONS

In summary, I have approved the Petitioner's request to withdraw its allegation that the Notices of Election should have been posted in French. I have directed that a hearing be held regarding the Petitioner's first objection alleging that the Notices of Election were removed during the seventy-two hour period before the election and the Petitioner's second objection

regarding the alleged assignment of work to the drivers during the polling time of the election.

Accordingly, pursuant to the authority vested in the undersigned by the National Labor Relations

Board, herein called the Board,

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer with respect to the issues raised by Objections Nos. 1 and 2.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board, as to the issues raised. Within fourteen (14) days from the date of the issuance of such report, any party may file with the Board, an original and seven copies of Exceptions to the report, with supporting briefs, if desired. Immediately upon the filing of such Exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, upon the other parties. A statement of service shall be made to the Board simultaneously with the filing of Exceptions. If no Exceptions are filed thereto, the Board, upon the expiration of the period for filing such Exceptions, may decide the matter forthwith upon the record or make any other disposition of the case.

PLEASE TAKE NOTICE that on December 20, 2012, at 9:30 a.m., and on consecutive days thereafter until concluded, at Two MetroTech Center, 5th Floor, Brooklyn, New York, a hearing will be conducted before a hearing officer of the National Labor Relations Board on the issues set forth in the above Report, at which time and place the parties will have the right to

appear in person, or otherwise, to give testimony.

Dated at Brooklyn, New York, on this 11th day of December, 2012.

James G. Paulsen

Regional Director, Region 29 National Labor Relations Board

Two MetroTech Center

Brooklyn, New York 11201

Rodrey Smith 936 E 87 St Brooklyn Ny 11236 917-436-5081

On November 19, 2012 election was held at Premier Paratransit 940 Remsen ave. Notices of election was Put up and then taken down. The drivers of premier Paratransit filing Objection based on the non posting of Election notice. Due to management they notefied the operators that they could't disturbed the clairly Operations. Because of this they denied them of Their rights to vote The operators are not pleased with the out come of the elections. We the Operators of per premier paratransit request a re-e ion. Due to our sevil right being voliated. About 70% of the operators are of french decient and was not notefied of the election in french

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